TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1941~~ 1942

No. ~~1169~~ 79

WILLIAM A. ADAMS, WARDEN OF THE CITY PRISON OF MANHATTAN, AND JAMES E. MULCAHY, UNITED STATES MARSHAL, PETITIONERS

vs.

THE UNITED STATES OF AMERICA, EX REL. GENE McCANN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 23, 1942
CERTIORARI GRANTED APRIL 27, 1942

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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456091—42

In United States Circuit Court of Appeals
Second Circuit

UNITED STATES OF AMERICA, EX REL. GENE MCCANN, PETITIONER

For a Writ of Habeas Corpus

vs.

WILLIAM A. ADAMS, WARDEN OF CITY PRISON OF MANHATTAN, 125 WHITE STREET, NEW YORK CITY AND/OR THE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK, RESPONDENTS

Writ of habeas corpus

March 12, 1942

The PRESIDENT OF THE UNITED STATES OF AMERICA.

To: William A. Adams, Warden of City Prison of Manhattan, 125 White Street, New York City and/or the United States Marshal for the Southern District of New York or any other person having custody of one Gene McCann.

Greetings:

You are hereby commanded that you have the body of Gene McCann now detained in the City Prison of Manhattan, 125 White Street, New York City, by you imprisoned and detained, as it is said, with the time and cause of the said imprisonment and detention, by whatsoever name the said Gene McCann is called or charged, before the Judges of the United States Circuit Court of Appeals, Second Circuit, then presiding at the United States Courthouse, Foley Square, New York City, Room 1705, at 10:30 o'clock in the forenoon of March 16th, 1942, to do and receive what shall then and there be considered concerning the said
2 Gent McCann, and have you then and there this Writ, and,

The United States Marshal for the Southern District of New York and/or one of his Deputies, be and he hereby is directed to serve a copy of this Writ on the said Warden or upon such person acting in his stead, before the return date of this Writ before this Court, pursuant to the existent order entered in the Court below (Section 656, Title 28, U. S. Code) directing such service without cost to the petitioner Gene McCann.

Witness the Honorable LEARNED HAND, Senior Judge and/or one of his Associate Judges of the United States Circuit Court of Appeals for the Second Circuit, at the United States Courthouse, Foley Square, New York City, on the 12 day of March 1942.

AUGUSTUS N. HAND,
United States Circuit Court Judge.

3 In United States Circuit Court of Appeals, Second Circuit

[Title omitted.]

Petition for writ of habeas corpus

Filed March 20, 1942

To the honorable judges of the United States Circuit Court of Appeals for the Second Circuit; Greetings:

The Petitioner, Gene McCann, respectfully shows to this Court and alleges:

First. That your petitioner was indicted on or about February 18th, 1941, by the Gread Jury in the District Court of the United States in and for the Southern District of New York, charging six distinct violations of Title 18, Section 338 of the United States Code, to wit, using the mails to defraud. The matter came on for trial on July 7th, 1941, before the Honorable Merrill E. Otis, District Court Judge from Missouri, presiding as a visiting judge in the Southern District of New York. On Judw 22nd, 1941, your petitioner was found guilty by the aforesaid Judge without a jury on all counts and was sentenced to a term of three years on each of the first three counts to run concurrently and three years

4 on each of the last three counts to run concurrently with each other but not concurrently with the sentence on the first three counts. In effect, the total sentence amounts to six years and a fine of $600.00.

Second. From the date of the indictment and at all times during all of the proceedings in connection with the said indictment in the aforesaid District Court, your petitioner was not represented by counsel nor did your petitioner have the aid, benefit or protection of any counsel; your petitioner is and at all times has been a layman and not an attorney and as a layman sought to establish his innocence to the best of his ability.

Third. That at the outset of the trial as aforementioned upon the indictment charging the six felonies as aforesaid, your petitioner proceeded to waive a jury trial in the following fashion as is revealed by the following extract from the Court Clerk's Minutes:

"July 7th, 1941: Room 318:
Mathias F. Correa, U. S. Attorney by Richard J. Burke.
Gene McCann, Pro se.
Honorable Merrill E. Otis, District Court Judge, Presiding.
Defendant moves to waive trial by jury and the Court to decide issues of fact. Motion granted on consent of U. S. Attorney."

Thereafter upon information and belief, your petitioner and the Assistant United States Attorney in charge signed a stipulation prepared by the Assistant United States Attorney waving a jury trial which said stipulation, upon information and belief contained the signature of Honorable Merrill E. Otis below the words "So Ordered."

Fourth. Your petitioner submits that the proceedings below were a nullity in view of the fact that your petitioner was not represented by counsel and in view of the fact that your petitioner did not have the benefit of a jury to pass upon the issues of fact.

5 Fifth. That the cause or pretense of such imprisonment of petitioner is the aforesaid judgment of conviction and sentence thereon; that the said confinement, imprisonment, and restraint are illegal and that the same deprive the petitioner of his liberty without due process of law and the detention is violative of petitioner's rights to his liberty pursuant to the Constitution of the United States and the State of New York wherein he is now detained; that the order of commitment and the confinement and detention are illegal and void and violate the provisions of the Federal and State Constitutions.

Sixth. That no previous application for a Writ of Habeas Corpus has been made on the specific grounds stated herein.

Wherefore your petitioner prays that a Writ of Habeas Corpus issue herein directed to the persons mentioned above, and that upon the return thereof an order be made herein directing that the petitioner be released from his imprisonment and custody of the United States officers now detaining him.

Dated March 20, 1942.

GENE McCANN,
Petitioner.

6 STATE OF NEW YORK,
County of New York, ss:

Gene McCann being duly sworn, deposes and says that he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated upon information and that as to those matters he believes it to be true.

GENE McCANN.

Sworn to before me this 20th day of March 1942.

[SEAL.] THOS. D. ROMANELLA,
Notary Public.

7 In United States Circuit Court of Appeals for the Circuit

[Title omitted.]

Return to writ of habeas corpus

James Mulcahy, United States Marshal for the Southern District of New York and one of the alternate respondents herein, by Leo Lowenthal, Chief Deputy United States Marshal, for his return to the writ of habeas corpus herein and his answer to the petition:

1. Denies upon information and belief each and every allegation contained in paragraphs numbered 4th and 5th.

The respondent, further answering the said petition, alleges:

2. As United States Marshal for the Southern District of New York, respondent received a regular commitment under the seal of the United States District Court for the Southern District of New York and has at all times been ready to deliver the body of Gene McCann, the prisoner mentioned therein, to a United States penitentiary to serve the sentence imposed upon him, but has been stayed from so doing by the filing of a notice of appeal.

8 3. Upon information and belief, the petitioner did knowingly waive his right to the advice and assistance of counsel with full knowledge of the significance of such act.

4. Upon information and belief, petitioner was indicted on or about February 18, 1941, and upon arraignment on said indictment, requested an adjournment thereof, pending the making by him of a motion to quash the indictment for various reasons.

5. Upon information and belief, the aforesaid motion having been made upon voluminous papers and decided adversely to the petitioner herein, petitioner applied to this Court for a writ of mandamus to compel the District Court to grant his motion, which application was denied.

6. Upon information and belief, upon petitioner's refusing to enter a plea of either guilty or not guilty to the indictment, the District Court ordered that a plea of not guilty be entered, and advised the petitioner to retain counsel to defend him, which petitioner refused to do, stating in substance that he desired to represent himself; that the case was very complicated, and that he was so familiar with its details that no attorney would be able to give him as competent representation as he would be able to give himself.

7. Upon information and belief, thereafter petitioner brought three more motions in succession, seeking various forms of relief, all of which were prepared and argued by himself.

8. Upon information and belief, the trial commenced on July 7, 1941. When the case was called for trial in the Calendar Part of the District Court, the Court, Hon. Merrill E. Otis presiding (who subsequently tried the case), inquired of the petitioner whether he had counsel; petitioner replied he desired to represent himself; the Court inquired whether he was admitted to the Bar; petitioner replied that he was not, but that he had studied law, and was sufficiently familiar therewith adequately to defend himself, and was more familiar with the complicated facts of his case than any attorney could ever be.

9. Upon information and belief, petitioner then moved to have the case tried without a jury by the judge alone. There was a brief discussion between the Court, the petitioner, and the Assistant United States Attorney, at which it was determined that a form of waiver of petitioner's constitutional right to a jury trial should be prepared by the Assistant United States Attorney. Such a waiver was prepared and a copy thereof is hereto annexed and marked "Exhibit A." It was executed in writing by the petitioner and approved by the Assistant United States Attorney and by the Court.

10. Upon information and belief, the trial which ensued took two and a half weeks, during which the defendant represented himself without counsel.

11. Upon information and belief, he was convicted and sentenced, and filed an appeal and has up to this time and is at this very moment conducting his appeal in person although this Court, as did the Court below, has at least once suggested to him the advisability of his retaining counsel.

12. Upon information and belief, at petitioner's trial in the Court below, testimony disclosed that petitioner in person had in 1933 brought suit in the United States District Court against over six hundred individual defendants, demanding thirty million dollars damages for conspiracy in restraint of his trade, and had represented himself therein in person although he had been assisted at the trial thereof in 1936 by an attorney who appeared only, however, as "of counsel" to the petitioner. Testimony also disclosed that the petitioner conducted his own appeal in that matter without the aid of counsel to this Court and to the Supreme Court of the United States. The testimony also disclosed that the petitioner had brought suit, prior to

his indictment, in the Supreme Court of the State of New York against Joseph Brieloff and others who were subsequently named in the indictment as "victims," had conducted the case in person without counsel and had tried it in person in the said Supreme Court. Respondent refers to this testimony to show petitioner's intelligence, experience, and familiarity with courts and legal proceedings, as bearing upon the legality of his waiver of the rights to representation by counsel and a trial by jury.

Wherefore, respondent prays that the writ of habeas corpus be dismissed and the relator be remanded to the custody of the United States Marshal for the Southern District of New York to be dealt with in accordance with law.

JAMES E. MULCAHY,
James Mulcahy, *Respondent.*
By LEO LOWENTHAL,
Chief Deputy, United States Marshal.

11 STATE OF NEW YORK,
County of New York,
Southern District of New York, ss:

Leo Lowenthal, Chief Deputy United States Marshal for the Southern District of New York, being duly sworn, deposes and says that he is acting for James Mulcahy, United States Marshal; that he has read the foregoing return and knows the contents thereof; that the same is true to his own knowledge except such matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Sources of deponent's knowledge and grounds of his belief as to all matters herein alleged upon information and belief consist of the files of the United States District Court for the Southern District of New York, and the annexed affidavit of Richard J. Burke, Assistant United States Attorney for the Southern District of New York.

LEO LOWENTHAL.
Leo Lowenthal.

Sworn to before me this 20th day of March 1942.

[SEAL] THOS. D. ROMANELLA,
Thos. D. Romanella,
Notary Public.

12 *Exhibit A to return*

United States District Court, Southern District of New York

UNITED STATES OF AMERICA

v.

GENE McCANN, DEFENDANT

I, Gene McCann, the defendant herein, appearing personally, do hereby waive a trial by jury in the above entitled case, having been advised by the Court of my constitutional rights.

Dated: New York, N. Y., July 7, 1941.

(signed) GENE McCANN,
Defendant, appearing personally.

Consented to:

(Signed) RICHARD J. BURKE,
Assistant United States Attorney.

So ordered:

MERRILL E. OTIS,
U. S. District Judge.

13 In United States Circuit Court of Appeals for the Second Circuit

[Title omitted.]

Affidavit of Richard J. Burke

Richard J. Burke, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Southern District of New York and is in charge of the prosecution of the above matter on behalf of the United States Marshal for the Southern District of New York.

That he has read the foregoing return to the writ of habeas corpus and knows the contents thereof, and the same is true to his own knowledge, including all matters therein stated to be alleged on information and belief.

RICHARD J. BURKE.
Richard J. Burke,

Sworn to before me this 20th day of March 1942.

[SEAL].

THOS. D. ROMANELLA,
Thos. D. Romanella,
Notary Public.

14 In United States Circuit Court of Appeals for the Second Circuit

No.—. October Term, 1941

(Motion argued March 20, 1942—Decided March 27, 1942)

UNITED STATES EX REL. GENE MCCANN, RELATOR

v.

WILLIAM A. ADAMS, WARDEN OF THE CITY PRISON OF MANHATTAN, AND JAMES E. MULCAHY, UNITED STATES MARSHAL, RESPONDENTS

On return to the circuit court of appeals upon a writ of habeas corpus, issued out of that court pending an appeal from a criminal conviction.

Before L. HAND, SWAN, and CHASE, Circuit Judges.

Frank J. Walsh for the relator.

Richard J. Burke opposed.

Opinion

15 L. HAND, Circuit Judge:

This case comes before us upon the return to a writ of habeas corpus, issued by a judge of this court. The relator was convicted on July 22, 1941, after a trial to a judge without a jury upon an indictment in six counts for using the mails to defraud. (§ 338, Title 18, U. S. Code.) He took an appeal and the trial judge fixed his bail at $10,000; being unable to procure this, he has been in custody since sentence. As the minutes have never been typed and until very recently he has had no lawyer to represent him and has no money, he has hitherto been unable to prepare any bill of exceptions, and it is at least doubtful whether any can ever be made up on which the appeal can be heard. Although his time has been extended again and again, so far little progress has been made. Moreover if any bill is ever settled, it is certain to be an unsatisfactory record of what took place at the trial. He has now, however, secured the assistance of an attorney, who first applied to us for his release on bail—more accurately for a reduction of the bail. We did reduce the amount to $1,000; but at the same time we suggested that he take out a writ of habeas corpus returnable before us, to raise the question of the jurisdiction of the district court for reasons that will appear. It is upon a return to that writ before this court in banc that the case now comes up.

The first question is of our own jurisdiction to entertain the writ and consider the point. Whitney v. Dick, 202 U. S. 132, decided that a circuit court of appeals might not issue a writ of habeas

corpus to review a judgment of conviction of the district court when the case was not already before it on writ of error; but the opinion declared that "cases may arise in which the writ of habeas corpus is necessary to the complete exercise of the appellate jurisdiction" (p. 136). What those "cases" were the court did
16 not find it necessary to say; but it was assumed that when they did arise, jurisdiction to issue the writ could be found in that section of the Revised Statutes which is now § 377 of Title 28, U. S. Code. In the particular circumstances of the case at bar, it seems to us that the writ it "necessary to the complete exercise" of our appellate jurisdiction because for the reasons we have given there is a danger that it cannot be otherwise exercised at all and a certainty that it must in any event be a good deal hampered. Moreover, we think that the writ is good on another ground. Rule VI of the rules governing criminal appeals confers upon us jurisdiction over bail once an appeal has been taken; and obviously it cannot be an objection that in deciding that an appellant should be released without bail, we incidentally decide that the appeal will succeed. If, however, we did so decide, our order would not dispose of the appeal, because we have no such power under Rule VI; and the appellant would be compelled to go on with the preparation of his bill of exceptions. It is true that a bill of exceptions might here be prepared which would be confined to the single point raised by this writ, but that would make the relator stake his whole case on that point, which is not fair. Therefore, it seems to us that the situation falls within the dictum of Whitney v. Dick, supra (202 U. S. 132) and that § 377 of Title 28, U. S. Code, gives us power to entertain the writ.

The fact are as follows. From the time of his arraignment on February 18, 1941, the relator conducted his case without the assistance of an attorney. After several interlocutory matters had been disposed of and he was called upon to plead, he refused to do so and a plea of not guilty was entered for him. He was then advised to retain an attorney but refused, saying that he wished to represent himself which he could do better than any
17 attorney could do for him. More interlocutory proceedings were had, in which again he represented himself; and finally the case came on for trial on July 7, 1941, when, in answer to an inquiry of the judge, he repeated that he wished to act without any attorney because, though not admitted to any bar, he had studied law and was able to defend himself, being more familiar with the facts than any attorney could ever be. He then moved to have the case tried by the judge without a jury and signed a consent in the following words: I "do hereby waive a

trial by jury in the above entitled case, having been advised by the Court of my constitutional rights." The judge entered an order approving this "waiver" and the trial began: it lasted for two weeks and a half and throughout it the relator acted for himself. At no time did he indicate that he wished a jury or that he repented of his consent—either while the cause was in the district court or in this court—until the attorney, who now represents him, in March, 1942, raised the point in the way we have mentioned. The question is whether under these circumstances the judge had jurisdiction to try him.

It will have been at once observed that if the right of trial by jury is one which the accused may surrender as he may surrender any other privilege or right, the relator unconditionally surrendered it. Not only did he do this expressly after his rights had been explained to him, and never afterwards recant; but he was actually the moving party, for it was he who asked the judge to try him. Furthermore, there is reason to suppose that in fact he did not suffer by submitting his guilt to a judge rather than a jury: for already in a civil action involving the same or similar transaction a jury of the Southern District of New York had decided against him. McCann v. New York Stock Exchange, 107 Fed. (2d) 908 (C. C. A. 2). This point is therefore presented to us in the barest possible form: Has an accused, who is without counsel, the power at his own instance to surrender his right of trial by jury when indicted for felony? Since the case of Patton v. United States, 281 U. S. 276, the surrender of that right has not been before the Supreme Court, but we are to assume that that decision is still law, at least as to the point actually decided, which was that the accused might lawfully consent to a jury of less than twelve—eleven as it chanced. It is quite true that the opinion proceeded upon broader grounds. "An affirmative answer to the question certified, logically requires the conclusion that a person charged * * * may * * * waive trial by a jury of twelve and consent to a trial by any lesser number, or by the court without a jury" (p. 290). Hughes C. J., took no part in the decision, and Holmes, Brandeis and Stone, JJ., concurred only in the result; perhaps because they did not think that consenting to go on before a jury of eleven, after one had fallen ill, involved the same constitutional question as consenting to a trial "by a court without a jury." Whether or not it does, practically there is much difference between being tried by a jury of eleven, or six, or for that matter even of three, and being tried by a judge. The institution of trial by jury—especially in criminal cases—has its hold upon public favor chiefly for two reasons. The individual can for-

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feit his liberty—to say nothing of his life—only at the hands of those who, unlike any official, are in no wise accountable, directly, or indirectly, for what they do, and who at once separate and melt anonymously in the community from which they came. Moreover, since if they acquit their verdict is final, no one is likely to suffer of whose conduct they do not morally disapprove; and this introduces a slack into the enforcement of law, tempering its rigor by the mollifying influence of current ethical conventions. A trial by any jury, however small, preserves both these fundamental elements and a trial by a judge preserves neither, at least to anything like the same degree.

19 Be that as it may, in any event the court in Patton v. United States, supra (281 U. S. 276), was plainly concerned to protect even that measure of surrender which had been made in the case before it, as appears from the language (p. 312) with which it hedged the accused's power. They meant his consent, to be jealously scrutinized; they did not mean to impose upon him the same responsibility for his choice as rests upon him in ordinary affairs. It appears to us that we should treat it as a critical circumstance—at least, when the accused surrenders his right to any jury whatever—that he shall have the advice and protection of counsel in making that choice. We are by no means sure that we should have thought so, had it not been for the recent decisions of the Supreme Court in Johnson v. Zerbst, 304 U. S. 458, and especially in Glasser v. United States, 314 U. S.—. Neither is indeed on all fours with the case at bar; and each presupposes that, if fully advised, the accused may be tried without counsel and may conduct his own case. The relator at bar, having been so advised and insisting upon defending himself, took his chances therefore as to the general conduct of the trial; if he suffered, his misfortune was on his own head. But as to the point here two scruples coalesce, and as to each the Supreme Court has shown itself especially sensative. There are indeed laymen who are quite capable of appraising their chances as between judge and jury—the relator is probably one of these—but a right so fundamental should not depend upon the outcome of a preliminary inquiry as to the competency of the particular accused; and certainly there can be no doubt that the ordinary layman does not have the necessary experience. Limiting ourselves therefore to the exact situation before us, we hold that when on trial for a felony, the accused—at least when not himself a lawyer—may not consent to be tried by a judge except upon the advice of an

20 attorney, retained by him or assigned to him, even though that advice extends to no more than that particular choice.

For the foregoing reasons the relator will be discharged.

Relator discharged.

Dissenting opinion

CHASE, Circuit Judge (dissenting):

The discharge of the relator seems to have been put upon the ground that even though he may have had a thorough understanding of his constitutional and other rights he could not lawfully waive his right to a trial by jury because he acted without the assistance of an attorney. If my understanding is correct, a limitation has been placed upon an accused's right to act without counsel and conduct his own trial to the extent that he cannot agree to be tried without a jury, though the court may have advised him as to his rights and then have approved his choice, unless an attorney advises him also.

It is clear that we, bound to give effect to Patton v. United States, 281 U. S. 276, must take it for granted that the relator could waive a trial by jury. It seems to be equally clear that he could waive his right to have the assistance of counsel in so doing. Johnson v. Zerbst, 304 U. S. 458; Glasser v. United States, 314 U. S. ——.

He certainly made it abundantly clear that he did not want the assistance of counsel and that he did not want to be tried by a jury. If he was competent to reach such decisions in the sense that he had knowledge and intelligence enough to make them with understanding of the possible consequences, it is of no moment that he was, or became, competent without the assistance of counsel. Whether or not he was in fact competent was a matter for the court to determine and the order made on the waiver of a jury trial was, in the absence of any showing whatever
21 to the contrary, sufficient evidence of such a determination though an express finding would, perhaps, have been in order. However that may be, it is enough for present purposes that the relator has the burden, which he has not carried, "to establish that he did not competently and intelligently waive his constitutional right to assistance of counsel" (Johnson v. Zerbst, supra) before the lack of such assistance is held to invalidate his waiver of a jury trial and is made the basis of his discharge on this writ.

I would dismiss the writ.

22 In United States Circuit Court of Appeals, Second Circuit

Present: Honorable LEARNED HAND, Honorable THOMAS W. SWAN.

UNITED STATES OF AMERICA, EX REL GENE MCCANN

vs.

WILLIAM A. ADAMS, WARDEN OF CITY PRISON OF MANHATTAN, 125 WHITE STREET, NEW YORK CITY, AND/OR THE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK, RESPONDENTS

Order releasing relator

March 31, 1942

Upon reading and filing the writ of habeas corpus issued by the Honorable Augustus N. Hand, United States Circuit Court Judge, on the 12th day of March 1942, and the petition therefor of Gene McCann verified the 20th day of March 1942, and the return of the respondents James Mulcahy, United States Marshal for the Southern District of New York, by Leo Lowenthal, Chief Deputy United States Marshal, verified the 20th day of March 1942, with Exhibit "A" annexed thereto, and the affidavit of Richard J. Burke, Assistant United States Attorney for the Southern District of New York, verified the 20th day of March 1942, and after hearing Frank J. Walsh, Esquire, in support of the said petition, and Richard J. Burke in opposition thereto, and due deliberation having been had thereon, and upon filing the opinion of the Circuit Court of Appeals herein, dated March 27, 1942, on motion of Frank J. Walsh, Esquire, attorney for the relator, it is hereby

23 Ordered, adjudged, and decreed that the relator Gene McCann be and hereby is ordered to be forthwith released from the custody in which he now is, and the United States Marshal, one of the respondents herein, is ordered to effect such release upon condition that the relator post bail with good and sufficient surety in the amount of $1,000 to secure his appearance to prosecute his appeal now pending in this Court from a judgment and conviction in the United States District Court for the Southern District of New York on indictment numbered C 109–231, and also to secure his appearance for his further trial and prosecution in the United States District Court upon said indictment.

LEARNED HAND,
THOMAS W. SWAN,
C. J. J.

24 [Clerk's certificate to foregoing transcript omitted in printing.]

U. S. GOVERNMENT PRINTING OFFICE: 1942

Supreme Court of the United States

Order allowing certiorari

Filed April 27, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for argument on Tuesday, May 5th, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE 1942